Inland Revenue
Te Tari Taake

26OIA1903

19 February 2026

[redacted]

Dear [redacted]

Thank you for your request made under the Official Information Act 1982 (OIA), received on 27 January 2026. You requested the following documents:

1. *IR2025/447 – Summary of tax treatment of carried interest;*
2. *BN2025/426 – Microsoft 365 Copilot rollout; and*
3. *BN2025/370 – PepsiCo tax case in Australia*

Information being released

I am releasing the below documents, attached as **Appendix A.** Some information in these documents has been withheld under the following sections of the OIA, as applicable:

- 6(a) – to avoid prejudice to the security or defence of New Zealand or the international relations of the government,
- 6(c) – making available of that information would be likely to prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial,
- 9(2)(a) – to protect the privacy of natural persons, and
- 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown for members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.

As required by section 9(1) of the OIA, I have considered whether the grounds for withholding the information requested is outweighed by the public interest. In this instance, I do not consider that to be the case.

Item	Date	Document	Decision
1.	04/09/2025	BN2025/370 – PepsiCo tax case in Australia	Partially released
2.	05/11/2025	BN2025/426 – Microsoft 365 Copilot rollout	Partially released
3.	10/11/2025	IR2025/447 – Summary of tax treatment of carried interest	Partially released

Right of review

If you disagree with my decision on your OIA request, you have the right to ask the Ombudsman to investigate and review my decision under section 28(3) of the OIA. You can contact the office of the Ombudsman by email at: info@ombudsman.parliament.nz.

Publishing of OIA response

We intend to publish our response to your request on Inland Revenue's website (ird.govt.nz) as this information may be of interest to other members of the public. This letter, with your personal details removed, may be published in its entirety. Publishing responses increases the availability of information to the public and is consistent with the OIA's purpose of enabling more effective participation in the making and administration of laws and policies and promoting the accountability of officials.

Thank you again for your request.

Yours sincerely

Kerryn McIntosh-Watt
Policy Director

Appendix A
Item 1

Inland Revenue
Te Tari Taake

Policy
Taukaea
55 Featherston Street
PO Box 2198
Wellington 6140
New Zealand

T. 04 890 1500

Briefing note

Reference: BN2025/370

Date: 4 September 2025

To: Revenue Advisor, Minister of Revenue – Angela Graham
Private Secretary, Minister of Revenue – Melissa Zhen

From: Matthew Gan

Subject: **PepsiCo tax case in Australia**

1. This briefing note provides a high-level summary of the recent Australian High Court judgment in *Commissioner of Taxation v PepsiCo, Inc and Commissioner of Taxation v Stokely-Van Camp, Inc* [2025] HCA 30, which has been closely followed by the tax community in New Zealand. It also highlights the potential significance of the case for New Zealand.

PepsiCo case

2. The PepsiCo litigation concerns the tax consequences arising from two exclusive bottling agreements (EBAs) between two related US companies, PepsiCo, Inc. (PepsiCo) and Stokely Van Camp, Inc. (SVC), and an unrelated Australian company, Schweppes Australia Pty Ltd (Schweppes). The litigation centred on the question of how payments under commercial contracts should be characterised for tax purposes, with a particular focus on embedded royalties.

3. Schweppes was the sole distributor of Pepsi, Mountain Dew and Gatorade in Australia under the EBAs with PepsiCo/SVC. Schweppes bought beverage concentrate, supplied by a PepsiCo subsidiary in Australia, and used PepsiCo/SVC formulas, trademarks and other intellectual property (such as bottle/can designs) to produce drinks for sale in Australia. The only payments by Schweppes were for the beverage concentrate to the PepsiCo subsidiary in Australia.

4. The primary issue was whether the payments made by Schweppes were, to any extent, a royalty and subject to royalty withholding tax. The taxpayer argued that contractually the payments were just for goods, being the concentrate, and so no royalty withholding tax was payable. The ATO argued that part of the payment was in substance for a right to use PepsiCo's trademarks and intellectual property (despite the contract stating otherwise) and so was subject to royalty withholding tax.

5. The case was heard in March 2023 in the Australian Federal Court. The judgment released in November 2023 found in favour of the ATO by concluding that part of the payments made by Schweppes under the EBAs was consideration for the use of, or right to use, the relevant trademarks and other intellectual property and subject to royalty withholding tax.

6. PepsiCo/SVC appealed the decision, and the case was heard before the Full Federal Court in May 2024. The judgment released in June 2024 overturned the original

decision by a 2-1 majority. The majority concluded in PepsiCo's favour that the payments were solely for the concentrate.

7. The ATO appealed the decision to the High Court of Australia and the case was heard in April 2025. The judgment released in August 2025 confirmed the Full Federal Court decision in PepsiCo's favour by a 4-3 majority. In particular:

    - The payments made by Schweppes did not include a royalty paid as consideration for the use of, or right to use, trademarks and other intellectual property licensed to Schweppes under the EBAs; and
    - Even if the payments made by Schweppes were found to have included a royalty component, such component was not income derived by, and was not paid to, PepsiCo and SVC, and was not subject to royalty withholding tax. This is because the payments for the concentrate were made to a PepsiCo subsidiary in Australia.

8. The ATO has acknowledged the High Court decision confirming that PepsiCo/SVC are not liable for royalty withholding tax. There is no higher court in Australia to which it can appeal the decision.

Significance of the PepsiCo decision for New Zealand

9. The PepsiCo majority decision is significant. It clarifies how commercial contracts should be interpreted and while, not binding on New Zealand, it is being reviewed with interest by the New Zealand tax community.

10. The High Court's decision shows that the positions of the Australian courts and the ATO are not always aligned. The judgments and relative closeness of the majority decisions also shows that in other circumstances the Australian courts may have found in the ATO's favour. It is not clear cut how a similar case to PepsiCo would be determined in New Zealand.

11. The High Court's decision also has immediate relevance for how Australia's domestic royalty withholding tax provisions are to be interpreted and applied. This is particularly relevant for software distribution arrangements, as the ATO issued a draft taxation ruling[1] in January 2024 taking a broad interpretation of when a payment under such an arrangement will constitute a royalty and be subject to withholding tax in Australia. In particular, the ATO consider that a payment for the distribution of goods or services may include an in-substance royalty component in some circumstances and so be subject to royalty withholding tax.

12. Private sector stakeholders contacted us at the time with concern over the draft ruling for New Zealand software companies distributing in Australia. They were concerned that the ATO may expect them to pay royalty withholding tax when they distribute software in Australia under the broad interpretation of a royalty in the ruling. This is a matter that we have been discussing with the ATO and Australian Treasury, 6(a)

13. The ATO deferred finalising its draft taxation ruling in light of the pending High Court case for PepsiCo. Now that the decision has been released, the ATO is considering what impact it may have on the draft ruling. We will continue to follow this with interest and engage directly with the ATO and Australian Treasury as needed.

[1] TR 2024/D1 | Legal database

14. The private sector has asked whether New Zealand will be taking a similar approach to Australia on software distribution arrangements. Inland Revenue is in the process of updating its guidance on the tax implications for non-resident software supplier payments derived from New Zealand, 6(a)

Matthew Gan
Principal Policy Advisor
9(2)(a)

Item 2

Inland Revenue
Te Tari Taake

Briefing note

Reference: BN2025/426

Date: 05 November 2025

To: Revenue Advisor, Minister of Revenue – Angela Graham
Private Secretary, Minister of Revenue – Anna McGuinness

From: Patrick O'Doherty, Enterprise Leader, Data, Analytics and Insights

Subject: **Microsoft 365 Copilot rollout**

Purpose

1. The purpose of this briefing note is to provide more information about our rollout of Microsoft 365 (M365) Copilot across Inland Revenue.

Background

2. Artificial Intelligence (AI) is not a new phenomenon. IR has been investing in and using forms of AI for a number of years, including as part of its business transformation programme which ran from 2016 to 2022. We use AI to help us improve the services we provide and the productivity of our people. Many of the systems we use have integrated rules and models to support productivity and efficiency. Business rules enable us to automate business processes and analytical models allow us to better target our resources to the highest value work. Machine learning algorithms work across large data sets to provide advanced analytics, decision support and predictive modelling. All uses of AI are carefully managed and scrutinised with stringent human oversight.

3. As a result of the business transformation programme, the quality of the information and data IR holds is very high. This positions us very well to take full advantage of advances in digital technology that rely on good quality data. This includes the latest forms of AI.

4. Since late 2023, we've been exploring how we can use generative AI to work more efficiently and deliver better outcomes for New Zealanders. To ensure we do this safely and retain the confidence of the public we have put in place:

   - A staff use policy which sets out the requirements for using AI products and services at IR.
   - AI fluency training to help our people confidently support the adoption of AI in IR. This has been used as the foundation for AI literacy training for the public sector.
   - An AI oversight group to provide additional checks and balances over decisions about which AI tools we will use and how we will use them.
   - An AI application register. Only business tools that have been approved can be used on IR work devices.
   - We are investigating approaches to ensure that our public content and information remain highly trusted by New Zealanders and can be used in an efficient and effective manner by AI tools and services available to the public.
   - We are constantly reviewing our information security posture and solutions to ensure there is no inadvertent use of unapproved tools or leaking of sensitive information.

5. Customers have also begun using AI for tax advice. We have developed guidance for our customer-facing people to help them respond to customer questions about using tax advice sourced from AI services. Our staff reinforce that our website is what customers should rely on for tax advice, or they should consult with an accountant or qualified Tax professional.

6. In November 2024, we began rolling out Microsoft Copilot. Microsoft Copilot uses information from the internet to create content and summarise information. People interact with it through a chat interface, and it does not automatically access internal files or emails. Before being given access, our people had to complete an eLearn module and knowledge check. This is to ensure they use the tool appropriately.

Microsoft 365 Copilot

7. Following on from the successful rollout of Microsoft Copilot and the confidence we have gained through the AI groundwork put into place so far, earlier this year we piloted M365 Copilot.

8. Where M365 Copilot differs from Microsoft Copilot is that it is built into Microsoft 365 apps like Word, Excel, Outlook, PowerPoint, Sharepoint, and Teams and has access to data IR staff have access to. This includes emails, documents and calendars. It uses individual access privileges to ensure individual staff members don't get access to information they otherwise don't have access to. It can help our people to work more efficiently and effectively inside these apps:

    - In Word it can draft documents based on prompts or information from other files.
    - In Excel it can analyse data, create formulas, and generate charts.
    - In Outlook it can summarize emails or suggest replies.
    - In Teams it can recap meetings or track action items.

9. Selected teams from Policy and the Tax Counsel Office explored how it could support complex, high-trust work. The M365 pilot with these groups was successful and laid the groundwork for a staged rollout. It helped shape the support model to ensure our people feel confident and supported by refining learning resources, onboarding, and security processes.

10. From 13 October 2025, a staged rollout to our people has been underway. We will proceed cautiously making sure each group we rollout to has confidence in how to use this new tool well and safely. There will be around six roll out groups in total with the aim of giving all our people access by mid-2026.

11. A key focus is on realising the benefits of AI. Feedback from the pilot group was that M365 Copilot boosted their productivity, reduced overload, and improved their confidence using digital tools. Some examples of what our people used it for are creating draft documents, summarising meetings and emails, and automating routine tasks.

Implications for other agencies

12. The Government Chief Digital Officer has published an AI framework and guidance to help support the responsible, safe and transparent use of AI across the public sector. IR was consulted and provided feedback. While not binding, the framework and guidance do set out what agencies should consider before rolling out AI tools. IR's adoption of AI is consistent with the framework and guidance.

13. Drawing on international experience, we will roll out M365 Copilot through clearly defined, high value use cases, supported by role based training and strong security guardrails, with people kept firmly in the loop to manage risk and quality. Consistent with best practice AI literacy guidance, this approach is designed to lift productivity without always assuming workforce reductions, instead reskilling where appropriate. We also note emerging evidence that AI rollouts need a focus on disciplined prompt and

model use, expert oversight, and measured change management to ensure business benefits are realised and to avoid low quality output as well as erosion of institutional knowledge and value.

14. IR's successful adoption of AI is the result of a significant investment in both technology and a capability building programme. For the M365 Copilot rollout we are working on developing a range of resources including tailored learning and support, practical guidance, and hands-on support to build confidence and make using AI part of our everyday work.

15. IR is not the only agency using M365 Copilot. However, we understand we may be the only large agency rolling it out to all its people. The guardrails we have in place such as security and training have given us the confidence to do this. And we are happy to share our learnings with other agencies as we progress.

Patrick O'Doherty
Enterprise Leader – Data, Analytics and Insights
s 9(2)(a)

Item 3

Inland Revenue
Te Tari Taake

POLICY & CUSTOMER AND COMPLIANCE SERVICES

Tax policy report: Summary of tax treatment of carried interest

Date:	10 November 2025	**Priority:**	Low
Security level:		**Report number:**	IR2025/447

Action sought

	Action sought	Deadline
Minister of Revenue	**Note** the contents of this report **Agree** to recommendation	5 December 2025

Contact for telephone discussion (if required)

Name	Position	Telephone	Suggested first contact
Kerryn McIntosh-Watt	Policy Director	9(2)(a)	☒
Tony Morris	Customer Segment Leader – Significant Enterprises	9(2)(a)	☐

10 November 2025

Minister of Revenue

Summary of tax treatment of carried interest

Purpose

1. This report follows a discussion you had with the Commissioner of Inland Revenue on 4 November 2025 and provides a summary of Inland Revenue's current work and next steps on carried interest.

2. We have previously reported to you with our initial policy view on carried interest (IR2025/227 refers) and provided an update on our operational position (IR2025-324 refers). This report summarises and updates the information in those reports.

Background

What is "carried interest"?

3. In summary, "carried interest" is a form of compensation for fund managers in the private equity (PE) industry.

4. In broad terms, a typical PE investment will involve a fund manager coming together with a group of passive investors to acquire the shares in a target company. The passive investors provide financial capital to acquire the shares. The fund manager may have a small financial stake but will predominantly use their knowledge and expertise (services) to grow the target company, receiving a management fee during the life of the investment.

5. When the target company is sold, a portion of the amount received will be paid to the passive investors, along with dividends, as a return on their investment (the hurdle return). Assuming the dividends and sale proceeds exceed the hurdle return, a fixed proportion (usually 20%) of the excess is paid to the fund managers in addition to their management fee (the **carried interest**), with the remaining amount paid to the passive investors. Carried interest can therefore be seen as a performance-based reward for the fund manager's services and expertise.

What is the current tax treatment?

6. New Zealand does not currently have any specific tax rules that apply to carried interest. Carried interest is generally structured to be treated as a return on investment and, as such, entitled to capital gains treatment (except for the dividends) for tax purposes. Capital gains typically have favourable tax treatment globally and lead to a tax-free return in New Zealand.

6(c) [redacted]

6(c)

[redacted]

Inland Revenue's initial policy view

15. The issue with the taxation of carried interest is one of boundary setting – namely the boundary between capital and revenue receipts. The PE industry seems to acknowledge that carried interest is earned via labour activity but argue that the result is a capital gain. The counter argument to this position is that the activities undertaken by the fund manager are no different to a service provider providing management services and that the compensation is better viewed as taxable service income. There is no doubt that carried interest is a means to compensate the fund manager for their skills and expertise.

6(c)

[redacted]

16. As previously advised, our initial policy view is that there are good policy reasons to treat carried interest in relation to investment services performed in New Zealand as taxable income in line with similar performance-based reward income.

17. This issue is not on the Tax and Social Policy Work Programme, and we are not currently undertaking any policy work. This was agreed by you and the Minister of Finance in July. We seek your confirmation that no policy work should be undertaken at this time. 6(c)

Consultation

18. Inland Revenue Policy has not yet undertaken any consultation on this issue. The Treasury has not been consulted on this report.

9(2)(g)(i)

Recommended action

We recommend that you:

1. **note** the contents of this report concerning the current operational work

   Noted

2. **confirm** that Inland Revenue should not undertake any further policy work at this time

   Yes/No

9(2)(a)

Tony Morris
Customer Segment Leader
Customer and Compliance Services

9(2)(a)

Kerryn McIntosh-Watt
Policy Director
Policy

Hon Simon Watts
Minister of Revenue
/ /2025